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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,566	10/12/2007	Franco Cimatti	ST 0104 PUS	8876

  

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John A. Artz  
Artz & Artz, P.C.  
28333 Telegraph Road, Suite 250  
Southfield, MI 48034

EXAMINER	
GUTMAN, HILARY L	

ART UNIT	PAPER NUMBER
3612	

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/583,566	CIMATTI ET AL.	
	Examiner	Art Unit	
	Hilary Gutman	3612	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 November 2009.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 7, 10-13, 16-26, 28-31 and 35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 9, 14, 15, 27 and 32-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 June 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 7, 10-13, 16-26, 28-31, 35 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 11/19/09.
2. Applicant's election with traverse of Species A (Figures 1-6 and 8) in the reply filed on 11/19/09 is acknowledged. The traversal is on the ground(s) that the examination of the additional species would not seriously burden the examiner. This is not found persuasive because the search and examination of the four additional species and the additional claims would burden the examiner.

The requirement is still deemed proper and is therefore made FINAL.

### ***Information Disclosure Statement***

3. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Drawings***

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the rear appendages of the element of

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covering being set perpendicular to the element of covering of claim 2 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### *Claim Objections*

5. Claim 1 is objected to because of the following informalities:

In claim 1, on line 17, "substantially C is C-shaped" should "substantially C-shaped".

Appropriate correction is required.

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6. Claim 9 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The claim appears to recite the limitations previously recited in claim 8 from which this claim depends.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-6, 8-9, 14-15, 27, 32-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitations "it" in line 4, "front covering" in line 7, "the rear covering" in lines 7-8, "it" in line 14, "closing body" in line 16. There is insufficient antecedent basis for these limitations in the claim.

Claim 2 recites the limitation "their free ends" in line 4. There is insufficient antecedent basis for this limitation in the claim. In addition, it is unclear how the rear appendages which constitute a part of the "element of covering" can also be set "perpendicular to the element of covering" as recited. Perhaps applicant intends to recite that the folding top has two rear appendages perpendicular to the element of covering.

Claim 4 recites the limitations "front covering" in line 4 and "rear covering" in line 5. There is insufficient antecedent basis for these limitations in the claim.

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Claim 5 recites the limitations "front covering" in line 4 and "rear covering" in line 4.

There is insufficient antecedent basis for these limitations in the claim.

Claim 6 recites the limitations "front covering" in line 3 and "rear covering" in lines 2 and 3. There is insufficient antecedent basis for these limitations in the claim.

Claim 8 recites the limitations "front covering" in line 2 and "rear covering" in line 3.

There is insufficient antecedent basis for these limitations in the claim.

Claim 9 recites the limitations "front covering" in line 2 and "rear covering" in lines 3-4.

There is insufficient antecedent basis for these limitations in the claim.

Claim 14 recites the limitation "the outer frame" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 15 recites the limitation "the outer frame" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 33 recites the limitations "the bodywork" in lines 3 and 4. There is insufficient antecedent basis for these limitations in the claim.

### ***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-6, 8-9, 14-15, 27, 32, 34, as best understood, are rejected under 35 U.S.C. 102(b) as being clearly anticipated by EP '394.

*Claim Rejections - 35 USC § 103*

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP '394 as applied above and in view of Beerman et al. (2,836,457).

EP '394 lacks the transparent panel (window) being displaced parallel to itself in a substantially vertical direction. Beerman et al. teach this feature as seen in Figures 1 and 4. The transparent panel or window 8, translates in a substantially vertical direction from an extracted position (Figure 1, and solid lines of Figure 4) to a retracted position (dashed lines of Figure 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the transparent panel of EP '394 to translate in a manner as taught by Beerman

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et al. in order to allow the panel to move into a retracted position out of the way allowing for optimal space savings.

*Conclusion*

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 571-272-6662.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 571-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hilary Gutman/  
Primary Examiner, Art Unit 3612